

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission)
on its own motion, seeking to)
establish guidelines for)
administration of the Nebraska)
Universal Service Fund.)

Application No. NUSF-1

PROGRESSION ORDER NO. 18

TESTIMONY OF DAVID S. CLARK,
PRESIDENT AND CEO, COMMPARTNERS HOLDING CORPORATION

Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR THE RECORD.

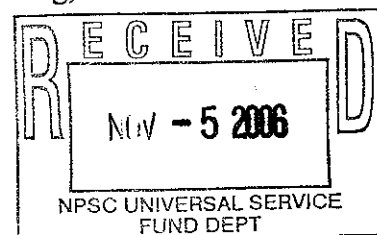
A: My name is David Clark and I am President of CommPartners Holding Corporation. The company's address is 3291 North Buffalo Drive, Suite 150, Las Vegas, NV 89129.

Q: WHAT IS THE RELATIONSHIP BETWEEN COMMPARTNERS HOLDING CORPORATION AND THE CERTIFIED COMPETITIVE LOCAL EXCHANGE CARRIER, COMMPARTNERS, LLC?

A: CommPartners Holding Corporation is the sole member of CommPartners, LLC. CommPartners, LLC serves as the regulated subsidiary for CommPartners Holding Corporation's ("CommPartners") telecommunications service operations. As a whole, CommPartners serves several lines of business. First, CommPartners Network Services sells hosted voice over Internet protocol telephony ("VoIP") to many VoIP providers. Second, CommPartners Carrier Services serves as a carrier's carrier terminating traffic for many large telecommunications carriers. CommPartners, LLC provides the underlying network for these services.

Q: WHAT ARE YOUR CURRENT JOB RESPONSIBILITIES?

A: In my capacity as President, I am ultimately responsible for all operations of the company. This includes its market entry strategy, obtaining financing, network configuration, sales and marketing, and back office set-up.



Q: PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A: Since participating in Applicant's founding in June 2003, I have served as Applicant's President and a member of Applicant's board of directors. I have overall responsibility for strategic guidance, personnel, financing, sales and corporate development/administration. From May 1997 to January 2001, I was Senior Vice President, Sales & Marketing and Senior Vice President, Investor Relations for MGC/Mpower Communications. My responsibilities included corporate sales and marketing development and implementation and a leading role in securing nearly \$1 billion in private equity, IPO, secondary equity and high yield debt financing. I was also the primary contact for investors and Wall Street funds and analysts at Mpower. From February 2001 to June 2001, I was the Chief Operating Officer for Wedding Referral Services (an Internet services company) and from August of 2001 to July 2002, I was the President and Chief Executive Officer for Pinnacle Armor (a manufacturer of patented, advanced ballistic armor). I have been in the telecommunications industry since 1989 with companies spanning private pay telephone, inmate phone system and specialty satellite services. I was a civilian contractor to the British military in Bosnia and was responsible for the Welfare Phone Service (via satellite) provided to British troops serving under the United Nations peacekeeping mandate. I serve as a director of Antenna Technology Communications, Inc. in Chandler, Arizona, and hold a degree in Mass Communications from Texas Tech University.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to describe CommPartners' concerns with the Nebraska Public Service Commission's ("the Commission") plans to apply the Nebraska Universal Service Fund ("NUSF") to VoIP. I believe there are policy problems with this approach, and practical implementation issues that the Commission should take into consideration in this docket.

Q: PLEASE DESCRIBE WHAT YOU CONSIDER TO BE THE POLICY PROBLEMS WITH APPLYING NUSF TO VOIP PROVIDERS.

A: My basic concern with application of NUSF to VoIP is that the Commission appears to be placing the cart before the horse in this docket. There are many programs already in place to support universal service in Nebraska. First, the federal universal service program ("FUSF") already sends millions of dollars annually to maintain access to telecommunications for Nebraska residents and businesses. As the Commission noted in its Opinion and Findings, the Federal Communications Commission recently extended FUSF to VoIP. VoIP providers are, therefore, already providing funding for Nebraska residents and businesses. The amount of the first distributions from VoIP providers to Nebraska will not be known until well into 2007. Until the total revenue received from VoIP providers via FUSF can be determined, the state can not know what the NUSF's funding needs will be. The Commission should not apply NUSF to VoIP simply because the FCC implied that states may have authority to do so. States must first determine how much revenue is needed to support state universal service, and then calculate what, if any, shortfall should be recouped by expanding the state universal service fund to include VoIP.

Q: PLEASE DESCRIBE YOUR CONCERNS REGARDING OUTSTANDING LITIGATION AND LEGISLATION.

A: The District of Columbia Court of Appeals is currently reviewing an appeal of the FCC's order applying FUSF to VoIP. Among other arguments, the plaintiffs are arguing that the FCC's decision is arbitrary and capricious. Application of NUSF to VoIP providers would require substantial resources for compliance. If the FCC is overturned, as often is the case with this appellate court, the Commission will be unable to use the FCC order as justification for applying NUSF to VoIP. Meanwhile, VoIP providers will have wasted resources to comply with a decision that can no longer be supported. Until the FCC's decision is final and unappealable, it is risky for the Commission to proceed with applying NUSF to VoIP providers. Finally, many members of Congress are convinced that the universal service system as a whole is broken and in need of reform. Universal service reform is likely to be a priority for the 110th Congress. Given the

upcoming elections and potential for major changes in Congressional leadership, this issue will remain in flux well into 2007 and potentially 2008. Overall it is clear that the broad issue of universal service is very much in flux.

Q: DOES THE ISSUE OF PENDING INTERCARRIER COMPENSATION REFORM AFFECT THIS ISSUE?

A: Yes. As the Commission is aware, the FCC is now soliciting comments on the Missoula Plan for intercarrier compensation reform. Much of the debate on intercarrier compensation revolves around the issue of ensuring reasonable prices for rural telephone customers—exactly the same issue that NUSF is largely designed to address. A version of the Missoula Plan is likely to be in place sometime in 2007. Until the final details are worked out and the plan is implemented by the state commissions, it is unclear what impact intercarrier compensation reform will have on the finances of rural telephone carriers. It is likely that although access charges will be reduced for all carriers, rural carriers will maintain higher access charges for the near future. As a result, it will be impossible to determine the impact that intercarrier compensation reform will have on the funding needs of NUSF. Until this issue has been settled and revenue impacts ascertained, application of NUSF to VoIP is premature.

Q: ARE THERE ANY MARKET CONSIDERATIONS THE COMMISSION SHOULD BE AWARE OF?

A: Yes. According to the FCC's 2005 Telephone Subscriber Report, there are 172.1 million landlines in use and 194.5 million cellular phone customers. This compares to less than 7 million VoIP customers. Although the VoIP market is growing, the relative number of customers is small. In the future, total VoIP customer subscribership is likely to increase dramatically, but the industry is not there yet. As a result, imposition of NUSF on VoIP providers now would result in very little additional revenue for the program. On the other hand, compliance with Commission rules on NUSF would be costly to VoIP providers and would act as a disincentive for providers to expand the availability of VoIP throughout Nebraska. Sometime in the future, VoIP use will substitute and supplant traditional landline subscribership. Right now, however, it is clear

that wireless telephone service is the real substitute for landlines. Until the VoIP market further matures, application of NUSF to VoIP will only slow the advance of VoIP and result in little additional revenue for NUSF. For this reason alone, the Commission should hold off on applying NUSF to VoIP.

Q: PLEASE DESCRIBE ANY PRACTICAL IMPLEMENTATION PROBLEMS YOU BELIEVE COMMPARTNERS WOULD EXPERIENCE AS A RESULT OF NUSF APPLYING TO VOIP.

A: Application of NUSF to CommPartners' lines of business would add complexity and burdensome costs. This is particularly the case for CommPartners' wholesale carrier's carrier service. As an interstate service, VoIP has never been subject to state regulatory surcharges. As such, VoIP providers created billing systems designed with the assumption that all traffic was interstate for jurisdictional purposes. We will need to create a way whereby we can track the minutes for every call carried on our network and find the calls where the originating and terminating area codes are from Nebraska to pull out calls that are intrastate. This will require analyzing millions of telephone calls every month. This is the only way to determine the revenue applicable to Nebraska intrastate traffic and will prove to be very costly and time consuming.

Application of NUSF to hosted VoIP customers would not be as difficult. If the Commission determines that NUSF should apply to VoIP, the most reasonable approach would be to extend NUSF only to situations where VoIP is truly substituting for traditional telephone service. In any system that the Commission creates, administration of NUSF must be easy. A per number flat rate or some other simple charge easily added as a line item to customer invoices should be considered as an alternative to a percentage-based calculation. If a flat rate is chosen, the Commission should first determine the NUSF's actual revenue needs, however, instead of choosing an arbitrary rate.

Q: WHAT IS LIKELY TO OCCUR IF NUSF COMPLIANCE IS DIFFICULT?

A: The Commission should be cautious in that if NUSF compliance is too difficult, VoIP providers will simply leave the state. Nebraska citizens will lose a competitive option and be left out of the inevitable transition from traditional telephony to VoIP. An

alternative possibility is that some VoIP providers will ignore their NUSF obligations, requiring the Commission to expend resources policing compliance.

Q: WHAT IS YOUR RECOMMENDATION TO THE COMMISSION CONCERNING THE APPLICATION OF NUSF TO VOIP?

A: I believe the Commission should wait on making any decisions in this docket until the legislative issues and pending litigation described earlier in my testimony have concluded. At that time, the Commission should then determine whether NUSF needs additional funds, and decide if VoIP penetration has grown sufficient to warrant applying NUSF to VoIP. At that point, the Commission can then create a plan whereby NUSF can be easily applied, collected, and administered for all types of telecommunications providers' revenue.

Q: WILL YOU REMAIN AVAILABLE TO RESPOND TO ANY ADDITIONAL QUESTIONS FROM THE COMMISSION OR ITS STAFF REGARDING THIS APPLICATION?

A: Yes.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

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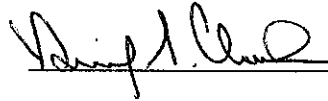
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Verification

I, David Clark, state that I am President of CommPartners, LLC, and hereby affirm that the information presented in the testimony attached is true to the best of my knowledge.

CommPartners, LLC

By:

 10/30/16

David Clark
President